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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1965

No. 40

THE PEOPLE OF THE STATE OF CALIFORNIA,

*Petitioner,*

v.

LYMAN E. BUZARD,

*Respondent.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

**REPLY BRIEF OF PETITIONER**

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**REPLY BRIEF OF PETITIONER**

**ARGUMENT**

**I. The Imposition of California License Fees on Respondent's Vehicle Will Not Result in Multiple Taxation**

Respondent urges that the imposition of motor vehicle fees under the facts of this case by the State of California would result in multiple taxation of servicemen.

Respondent states he voluntarily registered the car in Alabama and paid all Alabama fees at the time of purchase.<sup>1</sup> He did not then seek to register it in the State of Washington, his domiciliary state. He now

<sup>1</sup> The record shows that respondent purchased a used car which had Alabama license plates on it at the time of purchase (R 16).

urges imaginary difficulties that he would have encountered if he had tried to register it by mail. These imagined difficulties would not have developed since it was an ordinary factory-assembled vehicle and no physical examination of it by Washington authorities would have been required.<sup>2</sup> The interpretation of a statute (Section 574 of the Relief Act) should not rest upon an assumed state of facts unsupported by the record.

Respondent's argument that if California may impose license fees upon his vehicle then each of the states through which he would have traveled on his return to California could have done so fails to take into consideration the reciprocal or exemption provisions contained in state statutes applicable to non-resident motorists for a limited period provided the vehicle is properly registered in the state of residence.<sup>3</sup>

In fact, respondent, in order to take advantage of these and similar statutes, acquired the appearance of being a resident of the State of Alabama by obtaining an Alabama driver's license. In this connection the record discloses:

"Q. Now I am glad you mentioned the driver's license. You had a California driver's license?

"A. Yes.

<sup>2</sup> Appendix A, letters from the Manager of the Washington Title and Registration Branch, Motor Vehicle Division, indicates that the administrative practice of the State of Washington would not require a physical examination of respondent's vehicle.

<sup>3</sup> In addition, all other state statutes on this subject are listed in Appendix B.

"Q. Valid California driver's license?

"A. Yes.

"Q. And you also had an Alabama?

"A. Yes, and a Washington State driver's license.

"Q. You got the Alabama license while in Alabama? [fol. 27] A. Yes.

"Q. And am I correct that that State, even though you are on military duty there, if you are going to be driving there for any period of time, requires you to have a license?

"A. I believe there is a similar Alabama law to the one that they have in California. *However, the main reason that I obtained the Alabama driver's license was to have a driver's license to match the automobile plates, because some states I have run into trouble with having a driver's license from one state and plates from another, and you get in hot water if you happen to get stopped.*

"Q. It makes it inconvenient for you?

"A. Yes." (R 18.) (Emphasis added.)

California has a greater interest in the matter of the taxation of respondent's vehicle than a state in which the vehicle merely passes through in transit. Respondent is permanently stationed in this state and necessarily uses the highways of this state. Thus, California should properly be allowed to tax such vehicle for the privilege of using the highway where, as here, the federal act does not prevent it.

In conformity with this principle, Section 6701 of the California Vehicle Code denies exemption to servicemen permanently stationed in this state in situations where they purchase and register vehicles in

states other than their resident states while absent from this state on temporary duty or military leave. Absent such legislation, the serviceman is at liberty to choose any state in which to register his vehicle although the major use of the vehicle will be in this state. Since a privilege tax is involved for the use of the highways, California may properly require motor vehicle fees from servicemen permanently stationed in this state who are not otherwise exempt under the Relief Act although such serviceman may be temporarily absent from this state pursuant to temporary duty orders or orders for military leave.

An analogous situation was presented in the case of *Storaasli v. Minnesota*, 283 U.S. 57, 75 L.Ed. 839, 51 S.Ct. 354, in which a nonresident stationed at a military reservation in Minnesota was held liable for the motor vehicle fees established by that state. The court held it proper to require a resident of a federal military reservation within a state to pay a state motor vehicle registration tax as a condition of the right to use the state highways, although the state provides that vehicles owned by nonresidents properly registered in the county or state of the owner and carrying appropriate license plates of such state may use the highways for a limited period without payment of any tax (*Bode v. Barrett*, 344 U.S. 583, 97 L.Ed. 567, 73 S.Ct. 468).



## II. Effective Law Enforcement Through Registration of Vehicles Is of Major Import in This Case

Respondent raises the argument that imposition of the license fees are the paramount issue and not registration. He bases this upon his demonstrated willingness to register the vehicle without payment of the license fee as a condition thereof. The California Supreme Court adopted this argument.

The result reached, however, would be that respondent could then operate a vehicle in the State of California without registration or license plates because California has no statutory provisions for the registration of vehicles without payment of the license fees. The California Legislature did not provide for registration without payment of fees. Hence, law enforcement would be adversely affected by the existence of unidentifiable vehicles using California highways under these theories. Considering the volume of traffic to which the highways of the State of California are subjected, this is a vital problem.

## CONCLUSION

Petitioner submits that the provisions of the Soldiers' and Sailors' Civil Relief Act do not prohibit the State of California from taxing respondent's vehicle and imposing criminal sanctions for nonpayment

of such taxes. The decision of the California Supreme Court holding to the contrary should be reversed.

**THOMAS C. LYNCH**

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**Deputy Attorney General of the State of  
California**

*Attorneys for Petitioner*



## APPENDIX A

DEPARTMENT OF MOTOR VEHICLES  
Olympia, Washington, August 9, 1965

Mr. Nelson P. Kempsey  
Deputy Attorney General  
Room 500 Wells Fargo Bank Building  
Fifth Street and Capitol Mall  
Sacramento, California 95814

Dear Mr. Kempsey:

The State of Washington requires inspection of the following vehicles:

- 1—Assembled Vehicles
- 2—Home Made Trailers
- 3—Trucks converted from passenger cars
- 4—Pickups with permanently attached campers  
if passenger plates are applied for.

We do not require inspection of vehicles located in other states and owned by Washington residents who apply for Washington license except as above set forth. This applies to any resident of Washington whether or not he is in the armed services.

The above enumerated inspections would be required whether or not the vehicle was in Washington if application for Washington registration is made.

If a person states he is a resident of the State of Washington and we have no reason to believe otherwise, it would not be necessary for him to return to this State to register his vehicle in Washington.

Sincerely,

MARY R. HERN, *Manager*  
Title and Registration Branch  
Motor Vehicle Division

DEPARTMENT OF MOTOR VEHICLES  
Olympia, Washington, October 1, 1965

The Honorable Thomas C. Lynch  
Attorney General, State of California  
500 Wells Fargo Bank Building  
5th and Capitol Mall  
Sacramento, California

Re: Assembled Vehicles, State of Washington

Dear Mr. Lynch:

Section 3, Chapter 16, page 29, of the Rules and Regulations of the Motor Vehicle Division of the Department of Licenses, of the State of Washington reads as follows:

**ASSEMBLED VEHICLES.**

“When a vehicle is assembled from the parts of two or more vehicles, the year and make of the vehicle are determined by the year and make of the chassis used. The County Auditor will assign a special number to be used as the identification number and this number must be stamped on the frame of the vehicle. Then it must be inspected by the Washington State Patrol for verification. The body type will be called ‘assembled’. A County Assessor’s appraisal slip is required to determine the excise tax and will be required each year the vehicle is licensed.

We trust this is the information you desire.

Sincerely,

MARY R. HERN, *Manager*  
Title and Registration Branch  
Motor Vehicle Division

## APPENDIX B

### I. Statutes of States on Direct Route From Alabama to California

#### ALABAMA:

Code of Alabama, Title 51

§ 707. "The provisions of the foregoing section relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this state and not used for hire (or used for commercial purposes) in this state, for a period of thirty days from date of entering the state, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration number as required thereby; . . ."

#### CALIFORNIA:

California Penal Code

§ 6700. "Non-resident owner of a foreign vehicle of a type otherwise subject to registration under this code may, subject to exceptions and special provisions contained in this chapter, operate or permit the operation of the vehicle within this State without registering the vehicle in, or paying any fees to, this State, subject to the condition that the vehicle at all times when operated in this State is duly registered in, and displays upon it valid license plates issued for the vehicle in, the place of residence of the owner."

## MISSISSIPPI:

Mississippi Code Annotated  
Title 37, Ch. 4, § 9352-20:

“ . . . Any nonresident of the State of Mississippi who has paid the current privilege tax required by the laws of another state upon a private carrier of passengers [passenger automobile], and thereafter becomes a resident of the State of Mississippi, or brings such vehicle into the State of Mississippi for use in connection with his business in this state, or who is gainfully employed in this state shall be entitled to operate such vehicle without obtaining a privilege license in this state for a period of not more than thirty (30) days.

“Resident for the purpose of registration and operation of motor vehicles shall include but not be limited to the following:

“(a) Any person, except a tourist or out-of-town student, who owns, leases or rents a place within the state and occupies same as a place of residence. . . .”

## LOUISIANA:

Louisiana Statutes Annotated, Revised Statutes

R.S. 47: 511: “A vehicle owned by a resident of another state, which is there lawfully registered, may be operated upon the public highways of this state without registration or license when, by statute, contract, or understanding, an agreement had between the proper authorities of such state and the commissioner, there has been effected reciprocal arrangements whereby license plates of each state affected thereby are recognized by such other states, respectively, and when the vehicle bears approved license plates of

such state, if the same are required by the laws of that state. These operations shall be under the terms and provisions of such reciprocal arrangements."

R.S. 47: 512: "Subject to the rules and regulations prescribed by the commissioner, casual, irregular, occasional and unscheduled trips may be made into this state by foreign vehicles of nonresident owners, or by vehicles owned by the residents of another state or country, in the absence of any reciprocal agreements, without registration or the payment of a license fee as required by this Chapter, only when special permission from the commissioner has been obtained in each instance covering such casual, irregular, occasional and unscheduled operations."

#### TEXAS:

Vernon's Annotated Penal Code of Texas, Title 13  
V. Ann. P.C. art. 827b:

"Section 1. The following words and phrases when used in this Act shall for the purpose of this Act have the meanings respectively ascribed to them in this Section as follows:

"... 'Nonresident' means every resident of a State or Country other than the State of Texas whose sojourn in this State is as a visitor and does not engage in gainful employment or enter into business or an occupation, except as may be otherwise provided in any reciprocal agreement with any other State or Country.

"... Section 2. A nonresident owner of a motor vehicle, trailer, or semi-trailer which has been duly registered for the current year in the State or Country of which the owner is a resident and in accordance with the laws thereof, may be allowed to operate said

vehicles for the transportation of persons or property for compensation or hire without being registered in this State, provided the owner thereof does not exceed two (2) trips during any calendar month and remains on each of said trips within the State not to exceed four (4) days. . . . And provided, further, that any nonresident owner of a privately owned vehicle may be permitted to make an occasional trip into this State with such vehicle under this Act without being registered in this State. It is also provided that a nonresident owner of a privately owned passenger car not operated for compensation or hire may be allowed to operate said passenger car if duly registered in his resident State or Country for the length of time the license plates are valid, provided the owner is a visitor in this State and does not engage in gainful employment or enter into any kind of business or occupation. It is expressly provided, that the foregoing privileges may only be allowed in the event that under the laws of such other State or Country like exceptions are granted to vehicles registered under the laws of and owned by residents of this State. Provided further, that nothing in this Act shall affect the rights or statutes of any vehicle owner under any Reciprocal Agreement between this State and any other State or Foreign Country. . . .”

#### **NEW MEXICO:**

New Mexico Statutes, Chapter 64, Article 6  
§ 64-6-1:

“A. A nonresident owner owning any foreign vehicle of a type otherwise subject to registration hereunder may use or operate or permit the use or operation of such vehicle within this state for a period of



thirty [30] days without registering such vehicle in, or paying any fees to this state, subject to the condition that such vehicle at all times during this thirty [30] day period, when operated in this state, is duly registered in and displays upon it valid registration plate or plates issued for such vehicle in the place of residence of such owner . . . .”

## ARIZONA:

Arizona Revised Statutes:

§ 28-501:

“ . . . G. Every foreign vehicle owned by a non-resident and operated in this state other than for transportation of passengers or property for compensation, or for transportation of property, or in the business of a nonresident carried on in this state, shall be registered within ten days after beginning operation in the state in like manner as vehicles owned by residents, and no fee shall be charged for the registration, nor shall any number plates be assigned to the vehicle, but the vehicle division shall issue to the nonresident owner a permit distinctive in form, containing the date issued, a brief description of the vehicle and a statement that the owner has procured registration of the vehicle as a nonresident. A non-resident owner shall not operate such a vehicle upon the highways of this state, either before or while it is registered as provided in this section, unless there is displayed thereon the registration plates assigned to the vehicle for the current calendar year by the state or country of which the owner is a resident, nor unless the permit prescribed by this subsection is displayed on the windshield of the vehicle in the manner prescribed by the division. The permit shall



be valid for the period for which the registration plate was issued by the state of which the owner is a resident."

#### NEVADA:

Nevada Revised Statutes, Title 43, Chapter 482  
N.R.S. 482-385:

"1. Except as otherwise provided in NRS 482.390 [relating to commercial vehicles], a nonresident owner of a vehicle of a type subject to registration under this chapter, owning any vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in this state has displayed upon it the registration number plate or plates issued for such vehicle in the place of residence of such owner, may operate or permit the operations of such vehicle within this state without any registration thereof in this state under the provisions of this chapter and without the payment of any registration fees to the state . . . ."

#### II. List of Other State Statutes

1. ALASKA, Alas. Stats. 1962, Title 28, § 28.10.540.
2. ARKANSAS, Ark. Stats. 1947, Title 75, § 75-238.
3. COLORADO, Colo. Rev. Stats. 1963, Chapter 13, § 13-3-17.
4. CONNECTICUT, Conn. Gen. Stats., Title 14, § 14-34.
5. DELAWARE, Del. Code, Title 21, § 2112.
6. FLORIDA, Fla. Stats., Chapter 320, § 320.37.
7. GEORGIA, Code of Ga., Title 68, § 68-221.

8. HAWAII, Rev. Laws of Hawaii 1955, Title 21, § 160-12.
9. IDAHO, Ida. Code, Title 49, § 49-120.
10. ILLINOIS, Smith-Hurd Ill. Stats., Chapter 95½, § 3-402.
11. INDIANA, Ind. Stats., Title 47, § 47-2620.
12. IOWA, Iowa Code, Title XIII, Chapter 321, § 321.53.
13. KANSAS, Kan. Stats., Chapter 8, § 8-138.
14. KENTUCKY, Ky. Rev. Stats., Chapter 186, § 186.140.
15. MAINE, Maine Rev. Stats., Title 29, § 2243.
16. MARYLAND, Ann. Code, Art. 66½, § 57.
17. MASSACHUSETTS, Ann. Laws of Mass., Chapter 90, § 3.
18. MICHIGAN, Mason's 1961 Supplement, § 257.243.
19. MINNESOTA, Minn. Stats. Ann., Chapter 168.181.
20. MISSOURI, Vernon's Ann. Mo. Stats., Title 19, Chapter 301, § 301.271.
21. MONTANA, Rev. Codes of Mont., Title 53, § 53-129.
22. NEBRASKA, Rev. Stats. of Neb., Chapter 60, § 60-305.
23. NEW HAMPSHIRE, N.H. Rev. Stats., Title XXI, Chapter 260, § 260.39.
24. NEW JERSEY, N.J. Stats. Ann., Title 39, § 3-15.

25. NEW YORK, Consol. Laws of N.Y., Veh. & Traff. Law, Title II, Art. 3, § 250.
26. NORTH CAROLINA, Gen. Stats. of N.C., Div. IV, Chapter 20, Art. 3, § 20-4.4.
27. NORTH DAKOTA, N.D. Century Code, Title 39, § 39-04-18.
28. OHIO, Ohio Rev. Code, Title 45, § 4503.37.
29. OKLAHOMA, Okla. Stats. Ann., Title 47, § 22.12.
30. OREGON, Ore. Rev. Stats., Title 39, Chapter 481, § 481.155.
31. PENNSYLVANIA, Pa. Stats., Title 75, § 410.
32. RHODE ISLAND, Gen. Laws of R.I., Title 31, § 31-7-1.
33. SOUTH CAROLINA, Code of Laws of S.C., Title 46, § 46-101.
34. SOUTH DAKOTA, S.D. Code, Title 44, § 44.0112.
35. TENNESSEE, Tenn. Code, Title 59, § 59-435.
36. UTAH, Utah Code Ann., Title 41, § 41-1-19.
37. VERMONT, Vt. Stats. Ann., Title 23, § 411.
38. VIRGINIA, Codes of Va., Title 46.1, § 133.
39. WASHINGTON, Rev. Code of Wash. Ann., Title 46, § 46.16.030.
40. WEST VIRGINIA, W. Va. Code of 1961, Chapter 17-A, § 1721 (152).
41. WISCONSIN, Wis. Stats. Ann., Title 44; Veh. Code, Chapter 341, § 341.40.
42. WYOMING, Wyo. Stats., Title 31, § 31-68.